Supreme Court, U. S.
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No. 99-919

In The

Supreme Court of the United States

BALFOUR BEATTY BAHAMAS LIMITED,

Petitioner,

v.

FRED M. BUSH,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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REASONS FOR DENYING THE WRIT

The first and principal thrust of Petitioner's argument is that Florida Statute § 95.11(2)(a) violates the supremacy clause of the United States Constitution because it is in conflict with 28 U.S.C. § 1962. Aside from the fact that Petitioner did not argue this point to the Eleventh Circuit, this argument should fail because it is based upon the erroneous premise that a judgment lien requires a valid and enforceable judgment to support it.

28 U.S.C. § 1962 does not require that federal judgments be treated the same as state judgments, only that federal judgments be liens on property in the same manner, to the same extent and under the same conditions as state court judgments. This can occur without declaring Florida Statute § 95.11(2)(a) unconstitutional.

Anyone who is familiar with bankruptcy law knows that liens can exist, and be enforceable, beyond the life of the underlying debt or judgment. If a judgment creditor properly perfects a judgment lien that is not avoidable in bankruptcy, the lien is said to pass through the bankruptcy unaffected, even after the personal liability for the debt has been discharged. *Johnson v. Home State Bank*, 501 U.S. 78, 84; 111 S.Ct 2150; 115 L. Ed. 2d 66 (1991). The same is true with regard to dischargeable tax obligations. The debtor can discharge the tax liability but any properly perfected lien remains after the bankruptcy. If one accepts, then, that a judgment lien can exist and be enforceable despite the discharge or expiration of the underlying judgment debt, then there is no irreconcilable conflict between Florida Statute § 95.11(2)(a) and 28 U.S.C. § 1962. A properly perfected federal judgment lien

can be enforceable for 20 years even though the judgment itself is only enforceable for 5 years.

Petitioner next argues that the Eleventh Circuit's application of Florida Statute § 95.11(2)(a) to the facts of this case violates the *Erie* doctrine. *Erie* stands for the proposition that a state's decisional law, not a federal court's interpretation of "general law," governs the determination of a diversity jurisdiction case. It does not stand, as Petitioner would suggest, for the proposition that state law cannot differentiate between state court judgments and federal or foreign judgments. Furthermore, the effect of Florida Statute § 95.11(2)(a) is not so significant as to encourage forum shopping. Under 28 U.S.C. § 1962, the lien of the federal judgment lasts as long as the lien of a state court judgment. If a plaintiff elects to sue in federal court in Florida and is concerned that the judgment there obtained will only be effective for five years, he or she need only "domesticate" the federal judgment by recording a certified copy thereof in the office of the clerk of the circuit court of any county under the Florida Enforcement of Foreign Judgments Act, §§ 55.501-55.509, Florida Statutes. According to said Act, "A judgment so recorded shall have the same effect and . . . it may be enforced, released, or satisfied, as a judgment of a circuit or county court of this state." Florida Statutes § 55.503(1).

Petitioner also argues that the Eleventh Circuit misapplied Florida Statute § 95.11(2)(a) because discovery in aid of execution is not "an action upon a judgment." Certiorari is rarely granted when the asserted error consists of misapplication of the law. Nonetheless, it is not true that the limitation of § 95.11 for "an action upon a

judgment" only applies to a new and independent action and not to an attempt to enforce a judgment already in existence. In *Young v. McKenzie*, 46 So.2d 184 (Fla. 1950), the Florida Supreme Court held that the life span of an execution is not more than the judgment to which it relates. Therefore, an execution upon a judgment, even though it is not a new and independent action, must also be brought within the period of limitation of the judgment itself.

CONCLUSION

For the reasons given above the petition should be denied.

Respectfully submitted,

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